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ROUTING AND RECORD SHEET

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FROM:

Chief, Information & Privacy Division
1107 Ames Building

EXTENSION

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

DDIS

DIS

Attached are two letters to Senator Barry Goldwater by members of the Senate Select Committee on Intelligence concerning the FOIA bill - S 1324 "The Intelligence Information Act of 1983.

The major issues they discuss will be overcome for the most part. The issue of improving response time will be more difficult to deal with given existing resource configurations. It appears that [] will provide [] with some sort of response by August 19, 1983. I will check with [] to see what our input should be at this point. These letters give further indication that the Senate expects us to be more responsive to FOIA requesters pursuant to this legislation. The centralized review of documents may go a long way in satisfying this element of the bill. Also there is an indication follow-up reporting to the Senate will be required.

Your thoughts on these items, please.

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83-1776

BARRY GOLDWATER, AND CHAIRMAN
JOHN H. CHAPPEL, R.I.
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LLOYD BENTSEN, TEX.

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, D.C. 20510

83-2498

HOWARD H. BAKER, JR., TENN., EX OFFICIO
ROBERT C. BYRD, W. VA., EX OFFICIO
ROBERT R. SIMMONS, STAFF DIRECTOR
CARY J. SCHMITT, MINORITY STAFF DIRECTOR

August 3, 1983

Honorable Barry Goldwater
Chairman
Senate Select Committee on Intelligence
Washington, D.C. 20510

Dear Barry:

At the June 28th hearing on your "Intelligence Information Act of 1983," S.1324, I stated several concerns that I felt had to be met before I could support this bill. Committee staff and CIA personnel have worked on these and other problems for a month now, and I am impressed with their progress. Agreement on bill and report language by late September really seems possible.

To help this process along, I want to set forth my own views on the major issues. I also support the efforts of several colleagues to refine these issues, and we will work closely together to ensure that we do not delay things by going off in different directions.

There seem to be three major issues that may require amendments to the Bill. These are judicial review, cases involving intelligence "abuses," and the needs of historians for eventual access to as full a record as possible. Other matters also need to be pinned down, but they appear less difficult to resolve.

I am especially interested, as you know, in making sure that historians will have access to all material that can safely be released to them. The work of historians benefits us all, and I want to encourage it. The foremost need is for a limit on the age of files that CIA can designate. Eventually everything loses its sensitivity, but the Bill as currently written would allow such material to remain exempt from FOIA search and review forever. I think that a 30-year limit on this exemption is quite reasonable. After all, CIA would still not have to disclose anything that still merited classification.

Hon. Barry Goldwater
August 3, 1983
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A limited ability to obtain search and review of files less than 30 years old also seems warranted. The CIA concedes that the files on some intelligence collection operations, like the Glomar Explorer effort, can be searched and reviewed. I think that when the existence of an operation like Glomar or the Penkovski case or the Berlin tunnel has been acknowledged, such particular operations or particular cases merit search and review. I am confident that such a provision would raise no more risks for CIA than will the similar provision for special activities.

Both historians and journalists are interested in the issue of files concerning intelligence activities that have been investigated due to possible improprieties or illegalities. I understand that CIA's desire that an "abuses" provision not become a loophole through which requesters gain access to irrelevant information. It is not enough, however, to say that the files of investigative units will be open to search and review. Those files are often summary in nature, and material may have been overlooked by the investigators. I would much rather see bill language that kept the files of the investigated activity itself open to search and review. We could add report language that clearly stressed our intent not to open up files on aspects of an operation that had not been investigated.

The judicial review issue is similar, in some ways, to the "abuses" issue. Just as some files may be overlooked by an investigative unit, so may files contain material that is supposed to be open to search and review. It is difficult to sustain the CIA argument, then, that a judge should never be allowed to examine any documents to see whether a particular file should have been exempted from search and review. Whether a solution will require amending the Bill is unclear, but we need to reach agreement on a limited provision of this sort.

The lesser issues must not be forgotten while we work on the major ones. CIA's answers for the record on FOIA responsiveness are far from satisfactory; we need much more concrete plans to provide better servicing of FOIA requests, especially on the part of the Intelligence Directorate. We also need more forthcoming assurances from the CIA that it will treat generously the bereaved families of CIA officers and/or agents who have died under suspicious circumstances; their wishes to use FOIA to learn more about such deaths are no less reasonable than are the first-person requests of disgruntled former employees.

Hon. Barry Goldwater

August 3, 1983

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A crucial element in the CIA's case for this Bill, and an important public expectation, is that the Intelligence Committees will exercise sufficiently vigorous oversight to lessen the need to use FOIA to keep intelligence accountable to the American people. We can fulfill this responsibility only if the CIA agrees to keep us fully and currently informed of such matters as the CIA's use of clandestine intelligence techniques against Americans and the results of executive branch investigations of possible wrongdoing. Agreements on such reporting should be secured before mark-up and reflected in the report on this Bill.

I am confident that agreement can be reached on all these issues. Such agreement will depend upon a willingness of the CIA to bend, but I think we will find them reasonable.

Sincerely,



David Durenberger

DD/el/sm

cc: Senator Daniel Patrick Moynihan
Vice Chairman

DANIEL PATRICK MOYNIHAN, N.Y., VICE CHAIRMAN
JACK GARN, UTAH
JOHN H. CHAFFEE, R.I.
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LLOYD BENTSEN, TEX.

United States Senate

SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, D.C. 20510

August 1, 1983

83-2497

HOWARD H. BAKER, JR., TENN., EX OFFICIO
ROBERT C. BYRD, W. VA., EX OFFICIO

ROBERT M. SIMMONS, STAFF DIRECTOR
GARY J. SCHMITT, MINORITY STAFF DIRECTOR

The Honorable Barry Goldwater
Chairman
The Honorable Daniel Patrick Moynihan
Vice Chairman
Senate Select Committee on Intelligence
Washington, D.C. 20510

Dear Barry and Pat:

We appreciate your agreeing to the request that the markup of S.1324 be postponed until September. A great deal of work needs to be done to prepare for Committee consideration of the bill. We hope that Committee staff and CIA representatives can work together on a package for us to look at immediately after the recess. It should include a draft Committee report and draft amendments that address the issues raised at the hearings.

We have reviewed CIA's responses to Committee questions for the record, and we are pleased that CIA now accepts the principle of judicial review. However, CIA's proposal for extremely limited procedural review of file designation appears inadequate. Careful consideration is needed before the Committee decides upon report language or an amendment to define the scope of judicial review under the bill.

While agreed language on judicial review is most important, there are other issues that require consideration of amendments. These may be summarized as follows:

- First, an amendment should be drafted to ensure that the bill does not prevent search and review of designated files for relevant information about any intelligence activity that has been the subject of an official investigation for illegality or impropriety.

-- Second, amendments should be considered to meet legitimate needs for historical research. The DCI could be required, for example, to lift the designation of files more than thirty years old. Moreover, the bill could retain the right to search and review of information about specific collection operations the existence of which can be declassified.

-- Third, several technical amendments would help clarify the intent of the bill. These would specify the standards for designating files for each affected CIA component, in line with CIA's intent, and eliminate ambiguities with regard to search and review of information disseminated from designated files.

Specific report language would help alleviate other concerns expressed at the hearings.

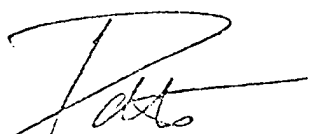
In addition to adoption of amendments and/or report language, it would be important to include in the report some of the information requested in our individual questions for the record, such as the impact of the bill on pending lawsuits, the releasability of particular types of documents, and the benefit to historians of information from operational files. Full responses are necessary so that the Committee report can verify the CIA's assurance that the bill "would not reduce the amount of meaningful information which is ultimately released under the FOIA."

Furthermore, in our view the CIA has not yet made a sufficient commitment to take positive steps to improve its responsiveness to FOIA requests after the bill is enacted. CIA's answers suggest that nothing will be done to reduce the current "several months" delay in processing requests for analytical products that do not involve operational files. At minimum, the Committee should consider directing that steps be taken to improve significantly CIA's processing of FOIA requests and that the Agency regularly report to the Committee on such matters as the allocation of resources to FOIA processing, reduction in the size of the backlog, and improvements in response time. The Committee should also consider strengthening its general oversight in areas related to the bill such as internal investigations of alleged intelligence abuses and clandestine operations against Americans.

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While there is thus much yet to be done, we remain encouraged about the prospects for the bill. We agree that this legislation could relieve the CIA of administrative burdens and security concerns associated with processing FOIA requests while protecting the public's right to full and timely responses to requests. We hope that the issues can be resolved as soon as possible when we get back in September so the Committee can proceed to markup without undue delay.

Sincerely,



Patrick J. Leahy



Walter D. Huddleston



Daniel K. Inouye